IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1301 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT
and
Hon'ble MR.JUSTICE A.L. DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKKUMAR N BUNDELA

Versus

STATE OF GUJARAT

Appearance:
MR KJ SHETHNA for Petitioner
MR KT DAVE APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 27/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order dated 12th October, 1993 passed by the learned Addl. Sessions Judge, Surat in Sessions Case no. 1 of 1992. The appellant before this Court is the accused no. 1. The learned trial Judge has recorded conviction of the appellant-accused no. 1 for offence punishable under section 302 IPC for the murder of one Prakashbhai Ramanbhai Telar and has been sentenced with life imprisonment. The appellant-accused no. 1 is also convicted for offence punishable under section 302 read with section 114 IPC for the murder of one Shri Dhansukhbhai Dhimar and has been sentenced with life imprisonment. The appellant-accused no. 1 is also convicted for offence punishable under section 135 IPC of the Bombay Police Act, however, no separate sentence has been passed. Both the sentences of life imprisonment are ordered to run concurrently. Feeling aggrieved, the accused no. 1 has preferred the present appeal.

2. The facts leading to the present appeal are :The accused no. 1-Appellant Ashokkumar Nagindas Bundela, the deceased Prakashbhai Ramanbhai Telar and Dhansukhbhai Bhikhabhai Dhimar were all resident of village Pisad, Taluka Palsana, District Surat. The appellant used to iron clothes of the village people. On 7th September, 1991 at around 8.30 p.m in the late evening, the complainant Jayeshbhai Ramanbhai Telar and his brother, the deceased Prakashbhai Ramanbhai Telar went to the village padar [parabdi] as usual. The appellant had his house opposite the parabdi across the road. Witness Rohitbhai Dahyabhai had some verbal altercation with the appellant. According to Rohitbhai, appellant did not iron out the crease from the clothes properly. This verbal altercation resulted into a heated exchange of words. Hearing the quarrel, the village people, including the witness Jayeshbhai, the deceased Prakashbhai and Dansukhbhai who had gathered at the parabdi, went towards the house of the appellant. Deceased Prakashbhai also joined in the complaint of Rohitbhai saying that the appellant did not press the clothes properly. Feeling agitated, the accused challenged Prakashbhai not to interfere while he had exchange of words with the witness Rohitbhai. With this challenge by the appellant, the quarrel became graver and the appellant started pushing Prakashbhai & Rohitbhai away from his house. Witness Rohitbhai & Prakashbhai also retaliated and all the three started shoving each other. Suddenly, the appellant took out knife from his pocket and stabbed deceased Prakashbhai on the left side of his chest. Prakashbhai immediately fell down. Seeing

Prakashbhai falling down, deceased Dhansukhbhai tried to extend some support to Prakashbhai. The appellant and the accused no. 2 Thakoresinh dragged Dhansukhbhai away from the deceased Prakashbhai and suddenly the accused no. 2 Thakoresinh took out knife from his pocket and stabbed Dhansukhbhai on his thigh from the backside. Deceased Dhansukhbhai also fell down. Both the injured viz., Prakashbhai and Dhansukhbhai succumbed to their injuries and died. Since the time of incident, the accused no. 2 Thakoresinh, who was the resident of another village nearby, has been absconding and has not been traced till the date. The trial has, therefore, proceeded against the accused no.1-Ashokkumar Nagindas Bundela, the appellant herein alone.

Mr. Shethna, the learned advocate appearing for the appellant has taken us through the entire record. He has submitted that the real genesis of the incident is not the one which has been made out by the witnesses. The real genesis or true origin of the incident is suppressed by the prosecution and the appellant, therefore, is entitled to benefit of doubt and consequent acquittal. In the alternative, he has submitted that in any view of the matter, considering the evidence on record, there is no doubt that the incident occurred as a result of grave and sudden provocation and the quarrel between the appellant, the witness Rohitbhai and the deceased Prakashbhai. The appellant is, therefore, entitled to invoke exceptions 1 and 4 to section 300 IPC and the appellant, therefore, cannot be said to have committed murder punishable under section 302 IPC. Besides, the prosecution has failed to establish that there was an intention to cause death nor the prosecution has established that the appellant had given knife blow to the deceased Prakashbhai with a knowledge that such injury was likely to cause death. The appellant, therefore, at the most can be said to have committed culpable homicide not amounting to murder, punishable under section 304 Part-II IPC. He has also submitted that conviction of the appellant for murder of the deceased Dhansukhbhai Dhimar with the help of section 114 IPC is wholly unsustainable. The fatal injury to the deceased Dhansukhbhai Dhimar was given by the accused no. 2 Thakoresinh which is a separate offence. The appellant cannot be connected with the said offence. The appellant, therefore, deserves acquittal of the charge framed against him under section 302 read with section 114 IPC for the murder of the deceased Dhansukhbhai Dhimar. In support of his arguments, he has relied upon the judgments of the Supreme Court in the matters of Commander Nanavati K.M vs. State of Maharashtra, [AIR

(1962) SC 605]; of Surinder Kumar v. Union Territory, Chandigadh, {AIR (1989) SC 1094}; of Ham Raj v. The State [Delhi Administration], [AIR (1990) SC 2252]; of Mavila Thamban Nambiar v. State of Kerala, [AIR (1997) SC 867]; of Ramesh Vithalrao Thakre vs. State of Maharashtra, [AIR (1995) SC 1453]; of Kunhayippu v. State of Kerala, [2000 SCC (Crime) 1374] and of Mansumsha Hasanasha Musalmal vs. State of Maharashtra, [2000 SCC (Crime) 722].

Mr. Dave, the learned APP has contested the appeal. He has submitted that the incident did not preceed by a sudden fight, as envisaged under exception 4 to section 300 IPC, nor can it be said to have occurred on account of grave and sudden provocation. Neither exception 1 nor exception 4 to section 300, therefore, can be invoked in the facts of the present case and the learned trial Judge has rightly convicted the appellant for the offences punishable under section 302 IPC. In support of his contention he has relied upon the judgments of the Hon'ble Supreme Court in the matters of Sikandar @ Mohd. Safiq vs. State of Delhi [Administration], [AIR (1999) SC 1406]; of State of U.P v. Jashwantsingh, [(1998) SCC (Criminal) 1344] and of Mahesh Balmiki @ Munna v. State of Madhya Pradesh , [AIR (1999) SC 3338].

The prosecution has examined the eye witness Jayesh Ramanbhai Telar [PW-2]. Jayeshbhai has proved the complaint Exh. 10 which he had given in respect of the death of his brother Prakashbhai Ramanbhai Telar. He has stated that on 7th September, 1991 he and his brother Prakashbhai had proceeded towards parabdi as usual. When they reached parabdi, they heard the heated arguments between witness Rohitbhai and the appellant. Both of them (i.e. the witness and the deceased Prakashbhai) and some others who were sitting at the parabdi proceeded towards the house of the appellant. The argument was in respect of the poor quality of ironing made by the appellant. Deceased Prakashbhai also interfered and also made complaint about the poor quality of ironing made by the appellant. Upon interference by the deceased Prakashbhai, the appellant felt more agitated and challenged Prakashbhai not to interfere. This resulted not only in verbal altercation but also physical shoving. The appellant started pushing the deceased Prakashbhai and the witness Rohitbhai. They also retaliated. However, suddenly appellant took out a knife from his pocket and stabbed deceased Prakashbhai on the left side of his chest. Deceased Prakashbhai fell down and started bleeding profusely. Witness Jayeshbhai went back to his

house, brought a car and carried injured Prakashbhai to the hospital at Bardoli. The Doctors there declared Prakashbhai to be dead. The body of deceased Prakashbhai was brought back home and the complaint was thereafter lodged with the police. The evidence of Jayeshbhai is consistent with what he had stated in his complaint before the police. The another eye-witness examined by the prosecution is Lalitkumar Manubhai Patel [PW-3]. He too has supported the prosecution and his evidence is more or less the same as that of Jayeshbhai. The third eye witness Parvatiben Dhansukhbhai Dhimar [PW-4] is the widow of the deceased Dhansukhbhai Dhimar. At the time of incident, deceased Dhansukhbhai had gone to parabdi to buy some tobacco from the nearby shop and she had accompanied Dhansukhbhai. Her evidence is also the same as that of witness Jayeshbhai. She has also stated that after Dhansukhbhai was stabbed by accused no. 2-Thakoresinh, she, her brother in law Balvant and her sister in law carried Dhansukhbhai to hospital in a rickshaw. He died before he could be administered any treatment. The body was left at the hospital. An entry in the police station diary [Exh. 50] was made in this connection on the information given by one doctor Shri Mukesh Jain of Sardar Samarak Hospital, Bardoli. Eye-witness Ishwarbhai Amrutbhai [PW-6], neighbour of the appellant and his wife Kantaben Ishwarbhai [PW-7] have not supported the prosecution case and have been declared hostile to the prosecution.

The prosecution has examined the Medical Officer, Primary Health Centre, Bardoli - one Dr. Ramiben Chaudhary [PW-8]. The said witness had performed post mortem of deceased Prakashbhai and Dhansukhbhai. She has proved the post mortem notes Exhs. 22 & 23. She has stated that deceased Prakashbhai had received one `L' shaped wound on the left side of his chest, 4 inches deep with, 0.5 cm breath with concavity towards the sternum. The said stab wound had caused internal injuries to the 4th and 5th ribs and the intercostal muscles were cut. The lower border of the upper lobe of the left lung and the left atrium were injured. Part of the right atrium with superior venacava were also injured. She opined that, "the cause of death is shock due to hemorrhage due to injury over major vessels and heart.' She has stated that the injury was anti-mortem and the internal injuries were corresponding to the external injuries. The said injury could have been caused by sharp weapon like pointed knife. The recovery of knife at the instance of appellant is proved by the recovery panchnama Exh. 44 and the evidence of panch Suresh Jethabhai [PW-17]. The scene of offence has been proved by panchnama Exh. 43

and the evidence of panch Kiran Kumar (PW-16) and Sureshbhai [PW-17].

Considering the above material evidence, we are unable to agree with Mr. Shethna that the genesis or the true origin of the incident has been suppressed by the prosecution. The evidence of eye witnesses proves beyond reasonable doubt that the occurrence took place on account of the verbal altercation between the witness Rohitbhai and the appellant in connection with ironing of the clothes by the appellant which resulted into heated exchange of words and physical blows also. The contention that the appellant deserves benefit of doubt and consequent acquittal, therefore, requires to be rejected. We also do not agree with Mr. Shethna that the incident took place on account of grave and sudden provocation. The complaint made by the witness Rohitbhai as regards the quality of ironing done by the appellant cannot be said to be a grave provocation which should result into a quarrel and the fatal injuries to the deceased Prakashbhai and Dhansukhbhai. In our view, therefore, exception 1 to section 300 cannot be invoked on the facts of the present case. We however do agree that the occurrence was preceded by a fight ie., all the eye witnesses have stated that on the interference by the deceased Prakashbhai, the appellant felt enraged which resulted into heated exchange of words and the appellant also started pushing witness Rohitbhai and deceased Prakashbhai and both - witness Rohitbhai and deceased Prakashbhai also retaliated by shoving the appellant and giving him blows. On the above set of facts, we are of the view that the appellant cannot be said to have committed culpable homicide with the intention of causing death, as envisaged under section 300 IPC. Nonetheless, the fact that the deceased Prakashbhai was unarmed and that the appellant took out the knife from his pocket and gave a blow on the left side of the chest of deceased Prakashbhai with such a great force that not only it caused external wound but also caused injuries to the vital organs like heart and lung and the major vessels like superior venacava, is sufficient to establish that the appellant had taken out the knife from his pocket with an intention to cause such bodily injury as was likely to cause death. We, therefore, hold that the appellant has committed offence punishable under section 304 Part-I IPC by causing fatal injury to the deceased Prakashbhai. We, therefore, set aside the conviction and sentence passed upon the appellant for the murder of deceased Prakashbhai and instead convict him for offence punishable under section 304 Part I IPC and alter the sentence to that of rigorous imprisonment for 10 years

and a fine of Rs. 10,000/= . On deposit of the amount of fine, a sum of Rs. 7500/= shall be paid to the parents of the deceased Prakashbhai Ramanbhai Telar. In the event of default in payment of fine, the appellant shall undergo rigorous imprisonment for six months.

As regards the death of the deceased Dhansukhbhai Dhimar, the only overt act attributable to the appellant is that when the deceased Prakashbhai fell down and as the deceased Dhansukhbhai tried to extend support to him, the appellant and the accused no. 2 Thakoresinh Dhanrajsinh dragged him away and Thakoresinh Sardar took out the knife from his pocket and stabbed deceased Dhansukhbhai on his thigh. By no stretch of imagination, the appellant can be said to have abated the commission of crime against the deceased Dhansukhbhai Dhimar. We are, therefore, of the view that the learned trial Judge has erred in convicting the appellant for the offence punishable under section 302 read with section 114 IPC for the murder of deceased Dhansukhbhai Dhimar. We accordingly set aside the conviction of the appellant for the murder of deceased Dhansukhbhai Bhikhabhai Dhimar punishable under section 302 read with section 114 IPC and the sentence passed upon him. The appellant is acquitted of the charge framed against him in respect of the death of the deceased Dhansukhbhai Dhimar.

The appeal is allowed to the above extent.

[Miss R.M Doshit, J.]

[A.L Dave, J.]

Prakash*